



ORANGE COUNTY
COASTKEEPER.

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Costa Mesa, CA 92626
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September 11, 2014

VIA CERTIFIED MAIL

CR&R Inc.
Attention: Managing Agent
11292 Western Avenue
Stanton, California 90680

CR&R Inc.
Attention: Managing Agent
7592 Orangewood Avenue
Garden Grove, California 90680

VIA U.S. MAIL

CT Corporation System c/o 11292 Western
Avenue
Registered Agent for CR&R Inc.
818 West Seventh Street
Second Floor
Los Angeles, California 90017

CT Corporation System c/o 7592 Orangewood
Avenue
Registered Agent for CR&R Inc.
818 West Seventh Street
Second Floor
Los Angeles, California 90017

Re: Notice of Violation and Intent to File Suit Under the Clean Water Act

To Whom It May Concern:

I am writing on behalf of Orange County Coastkeeper ("Coastkeeper") in regard to violations of the Clean Water Act,¹ California's Storm Water Permit,² and Orange County Sanitation District ("OCSD") Ordinance 39³ occurring at 11292 Western Avenue, Stanton, California 90680 ("Western Avenue Facility") and/or at 7592 Orangewood Avenue, Garden Grove, California 90680 ("Orangewood Avenue Facility"). This letter is being sent to you as the responsible owner and/or operator of each facility, or as the registered agent for that entity. This letter puts CR&R Inc. ("CR&R Facility Owner and/or Operator") on notice of the violations of

¹ Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.*

² National Pollution Discharge Elimination System ("NPDES") General Permit No. CAS000001 [State Water Resources Control Board] Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ.

³ Ordinance No. OCSD-39, Wastewater Discharge Regulations, Revising Article 1, Section 104, and Replacing Ordinance No. OCSD-37, available at: <http://www.ocsd.com/Home/ShowDocument?id=10651>.

the Clean Water Act occurring at the Western Avenue Facility and the Orangewood Avenue Facility including, but not limited to, unpermitted discharges of polluted storm water from the facilities into local surface waters. Violations of the Storm Water Permit and OCSD Ordinance 39 are violations of the Clean Water Act. As explained below, the CR&R Facility Owner and/or Operator is liable for violations of the Storm Water Permit, OCSD Ordinance 39, and the Clean Water Act.

Section 505(b) of the Clean Water Act, 33 U.S.C. § 1365(b), requires that a citizen give notice of his/her intention to file suit sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Clean Water Act, 33 U.S.C. § 1365(a). Notice must be given to the alleged violator, the Administrator of the United States Environmental Protection Agency ("EPA"), the Regional Administrator of the EPA, the Executive Officer of the water pollution control agency in the State in which the violations occur, and, if the alleged violator is a corporation, the registered agent of the corporation. *See* 40 C.F.R. § 135.2(a)(1).

On May 1, 2014, Coastkeeper sent the CR&R Facility Owner and/or Operator a letter issued pursuant to 33 U.S.C. §§ 1365(a) and (b) of the Clean Water Act ("Initial Notice Letter") putting the CR&R Facility Owner and/or Operator on notice that after the expiration of sixty (60) days from the date of the Initial Notice Letter, Coastkeeper intended to file an enforcement action in Federal court against it for violations of the Storm Water Permit and the Clean Water Act. On July 18, 2014, Coastkeeper filed its Complaint in the Central District of California, Civil Case No. 14-01133. Coastkeeper's Initial Notice Letter is incorporated herein by reference.

By this supplemental letter issued pursuant to 33 U.S.C. §§ 1365(a) and (b) of the Clean Water Act, ("Supplemental Notice Letter"), Coastkeeper puts the CR&R Facility Owner and/or Operator on notice that after the expiration of sixty (60) days from the date of this Notice Letter, Coastkeeper intends to amend its Complaint filed on July 18 against CR&R Inc. for the additional violations of the Storm Water Permit, OCSD Ordinance 39, and the Clean Water Act detailed below.

I. PARTIES

A. Orange County Coastkeeper

Orange County Coastkeeper is a non-profit public benefit corporation organized under the laws of the State of California with its office at 3151 Airway Avenue, Suite F-110, Costa Mesa, California 92626. Coastkeeper has over 2,000 members who live and/or recreate in and around Orange County and the Anaheim Bay, Huntington Harbour, and Bolsa Chica watershed. Coastkeeper is dedicated to the preservation, protection, and defense of the environment, wildlife, and natural resources of their local watersheds, including the Bolsa Chica Channel and its tributaries. To further these goals, Coastkeeper actively seeks federal and state agency implementation of the Clean Water Act, and, where necessary, directly initiates enforcement actions on behalf of itself and its members.

Members of Coastkeeper use and enjoy the waters into which the facilities discharge, including the Pacific Ocean, the Santa Ana River, and Bolsa Chica Channel and its tributaries.

Members of Coastkeeper use and enjoy these waters to picnic, hike, view wildlife, and engage in scientific study, including monitoring activities, among other things. Procedural and substantive violations of the Storm Water Permit including, but not limited to, the discharge of pollutants from the facilities impairs each of these uses. Further, these violations are ongoing and continuous. Thus, the interests of Coastkeeper's members have been, are being, and will continue to be adversely affected by the CR&R Facility Owner's and/or Operator's failure to comply with the Storm Water Permit and the Clean Water Act.

B. The Owner and/or Operator of the CR&R Facility

Information available to Coastkeeper indicates that CR&R Inc. is an owner and/or operator of the Western Avenue Facility and the Orangewood Avenue Facility. CR&R Inc. is an active corporation registered in California. The registered agent for the corporation is CT Corporation System, 818 West Seventh Street, Second Floor, Los Angeles, California 90017.

The CR&R Facility Owner and/or Operator has violated and continues to violate the procedural and substantive terms of the Storm Water Permit and OCSD Ordinance 39 including, but not limited to, the illegal discharge of pollutants from the facility into local surface waters and/or publicly owned treatment works ("POTW"). As explained herein, the CR&R Facility Owner and/or Operator is liable for violations of the Storm Water Permit, OCSD Ordinance 39, and the Clean Water Act.

II. WESTERN AVENUE FACILITY

A. The Western Avenue Facility's Pretreatment Permit Coverage

Prior to discharging pollutants to a POTW, an industrial discharger is required to obtain a permit from the POTW receiving its discharges. 33 U.S.C. §§ 1311(a), 1317(d). The sanitary sewer system and wastewater treatment plant operated by OCSD is a POTW. 40 C.F.R. § 403.3(q); *see also Waste Discharge Requirements and National Pollutant Discharge Elimination System Permit (NPDES) for Orange County Sanitation District*, Order No. R8-2012-0035, NPDES No. CA0110604 ("OCSD Permit"). Thus the CR&R Facility Owner and/or Operator must have a permit to discharge pollutants from the Western Avenue Facility to the POTW operated by OCSD.

On August 12, 2014, via a Public Records Act ("PRA") request Coastkeeper requested any permits and/or permit applications submitted by the CR&R Facility Owner and/or Operator to OCSD to discharge pollutants from the Western Avenue Facility to the sanitary sewer system operated by OCSD. In response to Coastkeeper's PRA, OCSD stated that the CR&R Facility Owner and/or Operator had made no permit application to discharge pollutants to the OCSD sanitary sewer system, and that no permit existed for the Western Avenue Facility. As such, information available to Coastkeeper from OCSD indicates that the CR&R Owner and/or Operator has no permit to discharge pollutants to the POTW operated by OCSD.

B. Storm Water Pollution, Wastewater, and the POTW Receiving the Western Avenue Facility's Discharges

Storm water and wastewater discharges from waste disposal, storage, and transfer sites, like the Western Avenue Facility, contain pollutants such as: total suspended solids (“TSS”); specific conductance (“SC”); heavy metals (such as copper, iron, lead, aluminum, and zinc); pathogens, bacteria (such as *E. coli*), and nutrients; oil and grease (“O&G”), hydraulic fluids, antifreeze, aromatic hydrocarbons, and chlorinated hydrocarbons; solvents and detergents; and paints. Many of these pollutants are on the list of chemicals published by the State of California as known to cause cancer, birth defects, and/or developmental or reproductive harm.

As described in detail below, information available to Coastkeeper, including publicly available documents and information provided to Coastkeeper by OCSD, indicates that storm water and wastewater from the Western Avenue Facility discharges to the POTW operated by OCSD. The OCSD Permit states that its POTW discharges to the Pacific Ocean and the Santa Ana River. The California Regional Water Quality Control Board, Santa Ana Regional Board (“Regional Board”) issued the *Santa Ana River Basin Water Quality Control Plan* (“Basin Plan”). The Basin Plan identifies the “Beneficial Uses” of water bodies in the region. The existing and/or potential Beneficial Uses for the Santa Ana River include: Municipal and Domestic Supply; Agricultural Supply; Groundwater Recharge; Water Contact Recreation; Non-contact Water Recreation; Warm Freshwater Habitat; Wildlife Habitat; Rare, Threatened or Endangered Species, Cold Freshwater Habitat; and Spawning, Reproduction and Development. See Basin Plan at Table 3-1.

C. The Western Avenue Facility and Associated Discharges Of Pollutants

i. Site Description

The Western Avenue Facility is a waste management, recycling and portable-storage container site that includes corporate offices, truck maintenance shops, a buy back recycling center, recycling processing facility for curbside collected recyclables, two truck washing areas, a diesel and gas fueling station, a spray paint booth, and a storage container fabrication workshop.

There are six (6) buildings at the Western Avenue Facility: (1) buyback recycling office, (2) vehicle maintenance shop, paint booth, and corporate office, (3) fabrication shop, (4) auxiliary building, (5) curbside recycling processing, and (6) steam cleaning bay and auxiliary building. The Western Avenue Facility also includes outdoor storage areas for curbside recycling materials, empty container bins, and equipment and truck parking. The outdoor curbside recycling material area is located in the northwest corner of the facility adjacent to the curbside recycling processing building. The outdoor empty container storage area is located in the western most part of the facility that abuts railroad tracks. The buy-back recycling center and the fueling pump island are also outdoors and uncovered.

ii. Industrial Activities and Associated Pollutants

The Western Avenue Facility’s industrial activities and areas are pollutant sources and include, but are not limited to: processing, loading, and unloading of solid waste and recyclable materials such as hazardous materials; metal crushing; storage of solid waste materials including, but not limited to, household hazardous material and electronic waste; bin storage, cleaning, and

maintenance; vehicle and equipment cleaning operations; vehicle and equipment refueling; vehicle and equipment maintenance; vehicle and equipment painting; storage of materials associated with equipment and vehicle maintenance; and storage of vehicles and equipment. The CR&R Facility Owner and/or Operator also stores and/or generates hazardous wastes such as oil, hydraulic fluid, brake fluid, and antifreeze.

The pollutants associated with the Facility include, but are not limited to: O&G; heavy metals (such as copper, iron, lead, aluminum, mercury, silver, and zinc); TSS, nutrients, pathogens, and trash; ammonia; magnesium; arsenic; cadmium; cyanide; selenium; motor oils, aromatic hydrocarbons, chlorinated hydrocarbons, antifreeze, hydraulic fluids, brake fluids, transmission fluids, gear lube, and axle grease; fugitive dust, dirt and debris; and pH-affecting substances.

Information available to Coastkeeper indicates that storage of vehicles and equipment, storage of materials associated with waste storage and transfer, and other industrial activities occur throughout the Western Avenue Facility outdoors, without adequate cover to prevent storm water and non-storm water exposure to pollutant sources, and without secondary containment or other adequate treatment measures to prevent polluted storm water and non-storm water from discharging from the facility to the POTW operated by OCSD.

iii. Storm Water and Wastewater Flows and POTW Connections

As described in detail in Coastkeeper's Initial Notice Letter, the CR&R Facility Owner and/or Operator reports that there are four (4) discharge points located on site, which are identified in the Western Avenue Facility SWPPP as Sample Point #1 (SP1), Sample Point #2 (SP2), Sample Point #3 (SP3), and Sample Point #4 (SP4). Information available to Coastkeeper, including Coastkeeper's observations and the Regional Board's September 28, 2009 denial of the CR&R Facility Owner's and/or Operator's request to terminate Permit coverage, indicates that Driveways 1-4 are also discharge points at the Western Avenue Facility.

In addition to the facility storm water discharge points, information available to Coastkeeper, including information provided by OCSD, indicates that storm water and wastewater on the Western Avenue Facility flow through the facility's clarifier system to the OCSD sanitary sewer. Specifically, several outdoor drain inlets on the Western Avenue Facility lead to five on-site clarifiers. Flows from the Western Avenue's five clarifiers then discharge to the OCSD sanitary sewer via the facility's sewer connections.

D. Clean Water Act and OCSD Ordinance 39 Violations

Any person who discharges to a POTW must comply with the terms of pretreatment standards, prohibitions, and limitations and/or a pretreatment permit issued by the POTW to lawfully discharge pollutants to the POTW. *See* 33 U.S.C. §§ 1311(a), 1317(d). A citizen may commence a civil action against any discharger who is alleged to be in violation of an effluent standard or limitation established pursuant to the Clean Water Act. *See* 33 U.S.C. § 1365(a)(1). Effluent standards and limitations include pretreatment standards, prohibitions, and limitations. *See* 33 U.S.C. § 1317(b). The pretreatment standards established in OCSD Ordinance 39 were

promulgated pursuant to the Clean Water Act, and are therefore enforceable effluent standards or limitations. See OSDC Ordinance 39, Art. 1, Sec. 101.

i. Discharges of Wastewater Not in Compliance with a Pretreatment Permit in Violation of Sections 301(a) and 307(d) of the Clean Water Act

Article 2, Section 203 of OCSD Ordinance 39 prohibits the discharge of groundwater, surface runoff, or subsurface drainage directly or indirectly to OCSD's sewerage facilities except as authorized by a permit issued pursuant to Article 3 of the ordinance. Article 3 provides for five specific types of discharge permits: (1) Class I Wastewater Discharge Permit, (2) Class II Wastewater Discharge Permit, (3) Dry Weather Urban Runoff Discharge Permit, (4) Special Purpose Discharge Permit, and (5) Wastehauler Discharge Permit.

The CR&R Facility Owner and/or Operator does not have a permit to discharge wastewater from the Western Avenue Facility to OCSD's sewerage facilities under any of the five permit categories. Thus, any and all wastewater discharges from the Western Avenue Facility to the OCSD sewerage facilities are unauthorized discharges not in compliance with a pretreatment permit in violation of OCSD Ordinance 39, Article 2, Section 203, 33 U.S.C. § 1311(a), and 33 U.S.C. § 1317(d).

The CR&R Facility Owner and/or Operator's violations of OCSD Ordinance 39, Article 2, Section 203, 33 U.S.C. § 1311(a), and 33 U.S.C. § 1317(d) occur every day the CR&R Facility Owner and/or Operator discharges wastewater from the Western Avenue Facility to OCSD sewerage facilities and are ongoing and continuous. Coastkeeper will update the number and dates of violation when additional information and data becomes available. Every day the CR&R Facility Owner and/or Operator discharges wastewater to the OCSD sewerage facilities not in compliance with a pretreatment permit is a separate and distinct violation of the Clean Water Act. The CR&R Facility Owner and/or Operator is subject to civil penalties for all violations of the Clean Water Act occurring since September 11, 2009.

ii. Discharges of Storm Water Not in Compliance with a Pretreatment Permit in Violation of Sections 301(a) and 307(d) of the Clean Water Act

Article 2, Section 203 of OCSD Ordinance 39 prohibits the discharge of groundwater, surface runoff, or subsurface drainage directly or indirectly to OCSD's sewerage facilities except as authorized by a permit issued pursuant to Article 3 of the ordinance. Article 3 provides for five specific types of discharge permits: (1) Class I Wastewater Discharge Permit, (2) Class II Wastewater Discharge Permit, (3) Dry Weather Urban Runoff Discharge Permit, (4) Special Purpose Discharge Permit, and (5) Wastehauler Discharge Permit.

The CR&R Facility Owner and/or Operator does not have a permit to discharge storm water from the Western Avenue Facility to OCSD's sewerage facilities under any of the five permit categories. Thus, any and all storm water discharges from the Western Avenue Facility to the OCSD sewerage facilities are unauthorized discharges not in compliance with a pretreatment permit in violation of OCSD Ordinance 39, Article 2, Section 203, 33 U.S.C. § 1311(a), and 33 U.S.C. § 1317(d).

The CR&R Facility Owner and/or Operator's violations of OCSD Ordinance 39, Article 2, Section 203, 33 U.S.C. § 1311(a), and 33 U.S.C. § 1317(d) occur every day the CR&R Facility Owner and/or Operator discharges storm water from the Western Avenue Facility to OCSD sewerage facilities and are ongoing and continuous. *See, e.g.*, Exhibit A (setting forth dates of rain events resulting in a discharge at the facility).⁴ Coastkeeper will update the number and dates of violation when additional information and data becomes available. Every day the CR&R Facility Owner and/or Operator discharges storm water to the OCSD sewerage facilities not in compliance with a pretreatment permit is a separate and distinct violation of the Clean Water Act. The CR&R Facility Owner and/or Operator is subject to civil penalties for all violations of the Clean Water Act occurring since September 11, 2009.

III. ORANGEWOOD AVENUE FACILITY

A. The Orangewood Avenue Facility's Storm Water Permit Coverage

Prior to beginning industrial operations, dischargers are required to apply for coverage under the Storm Water Permit by submitting a Notice of Intent to Comply with the Terms of the General Permit to Discharge Storm Water Associated with Industrial Activity ("NOI") to the State Water Resources Control Board ("State Board"). *See* Storm Water Permit, Finding #3.

Based on Coastkeeper's observations of the Orangewood Avenue Facility, the CR&R Facility Owner and/or Operator conducts industrial activities throughout the Orangewood Avenue Facility within Standard Industrial Classification ("SIC") code 4231 (terminal and joint terminal maintenance facilities for motor freight transportation). SIC code 4231 activities require coverage under the Storm Water Permit. However, information available to Coastkeeper indicates that the CR&R Facility Owner and/or Operator has submitted no NOI for the Orangewood Avenue Facility. Accordingly, the CR&R Facility Owner and/or Operator has failed and continues to fail to apply for and obtain Storm Water Permit coverage for the Orangewood Avenue Facility.

B. Storm Water Pollution and the Surface Receiving the Orangewood Avenue Facility's Discharges

With every significant rainfall event, millions of gallons of polluted storm water originating from industrial operations such as the Orangewood Avenue Facility pour into storm drains and local waterways. The consensus among agencies and water quality specialists is that storm water pollution accounts for more than half of the total pollution entering surface waters each year. Such discharges of pollutants from industrial facilities contribute to the impairment of downstream waters and adversely impact aquatic-dependent wildlife. These contaminated

⁴ Exhibit A lists dates of significant rain events as measured at the Garden Grove Fire Station rain gauge from December 2009 to May 2013. Dates of significant rain events from October 2013 to April 2014 listed in Exhibit A were measured at the Santa Ana rain gauge, as current data from the Garden Grove Fire Station is not yet available. A significant rain event is defined by EPA as a rainfall event generating 0.1 inches or more of rainfall, which generally results in measurable discharges at a typical industrial facility.

discharges can and must be controlled for downstream ecosystems to regain their health.

Storm water discharges from waste disposal, storage, and transfer sites, like the Orangewood Avenue Facility, contain pollutants such as: total suspended solids (“TSS”); specific conductance (“SC”); heavy metals (such as copper, iron, lead, aluminum, and zinc); pathogens, bacteria (such as *E. coli*), and nutrients; oil and grease (“O&G”), hydraulic fluids, antifreeze, aromatic hydrocarbons, and chlorinated hydrocarbons; solvents and detergents; and paints. Many of these pollutants are on the list of chemicals published by the State of California as known to cause cancer, birth defects, and/or developmental or reproductive harm.

Based on Coastkeeper’s site investigations and review of publicly available information about area surface waters, pollutants from the Orangewood Avenue Facility discharge to the City of Stanton municipal storm drain system that leads to the Stanton Storm Channel. The Stanton Storm Channel is tributary to the Bolsa Chica Channel. The Bolsa Chica Channel is tributary to Sunset Bay – Huntington Harbor, Anaheim Bay – Outer Bay, and Anaheim Bay – Seal Beach National Wildlife Refuge. The Bolsa Chica Channel, Sunset Bay – Huntington Harbor, Anaheim Bay – Outer Bay, and Anaheim Bay – Seal Beach National Wildlife Refuge are referred to collectively herein as the “Receiving Waters.” Discharges of polluted storm water to the Receiving Waters pose bacterial, carcinogenic, and reproductive toxicity threats to the public and adversely affect the aquatic environment.

The Receiving Waters are ecologically sensitive areas. Although pollution and habitat destruction have drastically diminished once-abundant and varied fisheries, these waters still provide essential habitat for dozens of fish, bird, and invertebrate species. These pollutants harm the special aesthetic and recreational significance that the Receiving Waters have for people in the surrounding communities, including Coastkeeper’s members. The public’s use of the Receiving Waters for water contact sports exposes people to toxic metals and other contaminants in storm water and non-storm water discharges. Non-contact recreational and aesthetic opportunities, such as wildlife observation, are also impaired by polluted discharges to these waters.

The existing and/or potential Beneficial Uses listed in the Basin Plan for Bolsa Chica Channel include, at a minimum: Warm Freshwater Habitat and Water Contact Recreation.⁵ The Basin Plan Beneficial Uses for Sunset Bay – Huntington Harbor, Anaheim Bay – Outer Bay, and Anaheim Bay – Seal Beach National Wildlife Refuge include: Navigation; Water Contact Recreation; Non-contact Water Recreation; Commercial and Sportfishing; Preservation of Biological Habitats of Special Significance; Wildlife Habitat; Rare, Threatened, or Endangered Species; Spawning, Reproduction and Development; Marine Habitat; and Estuarine Habitat. *See* Basin Plan at Table 3-1.

⁵ 2010 Integrated Report – All Assessed Waters, available at: http://www.waterboards.ca.gov/water_issues/programs/tmdl/2010state_ir_reports/02253.shtml#12579 (last accessed on April 29, 2014).

According to the 2010 303(d) List of Impaired Water Bodies, Bolsa Chica Channel is impaired for ammonia, pH, and indicator bacteria.⁶ Sunset Bay – Huntington Harbor is impaired for copper, lead, sediment toxicity, and pathogens, among other pollutants.⁷ Anaheim Bay – Outer Bay and Anaheim Bay – Seal Beach National Wildlife Refuge are impaired for sediment toxicity, among other pollutants.⁸ Polluted discharges from industrial sites such as the Orangewood Avenue Facility contribute to the degradation of these already impaired surface waters and of the ecosystems that depend on these waters.

C. The Orangewood Avenue Facility and Associated Discharges Of Pollutants

i. Site Description

The Orangewood Avenue Facility is a waste transfer site that includes a building, outdoor truck maintenance and/or storage areas, and outdoor bin maintenance, cleaning, and/or storage areas. Coastkeeper's observations indicate that the facility is at least 6.5 acres, the majority of which is unpaved.

The Orangewood Avenue Facility is bordered by Orangewood Avenue at the corner of Orangewood Avenue and Western Avenue. The points of egress/ingress to the facility include two (2) driveways leading to Orangewood Avenue. Driveway 1 serves as the egress/ingress for a paved portion of the Orangewood Avenue Facility on which the building and bin and truck storage and/or maintenance are located. Driveway 2 serves as the egress/ingress for an unpaved portion of the facility that is adjacent to railroad tracks behind the facility on which additional bin and truck storage, cleaning, and/or maintenance are located.

ii. Industrial Activities and Associated Pollutants

The Orangewood Avenue Facility's industrial activities and areas are pollutant sources and include, but are not limited to: bin storage, cleaning, and maintenance; vehicle and equipment cleaning operations; vehicle and equipment maintenance; storage of materials associated with equipment and vehicle maintenance; and storage of vehicles and equipment.

The pollutants associated with the Orangewood Avenue Facility include, but are not limited to: O&G; heavy metals (such as copper, iron, lead, aluminum, and zinc); TSS, nutrients, pathogens, bacteria, and trash; motor oils, aromatic hydrocarbons, chlorinated hydrocarbons, antifreeze, hydraulic fluids, brake fluids, transmission fluids, gear lube, and axle grease; fugitive dust, dirt and debris; and pH-affecting substances.

Information available to Coastkeeper indicates that storage of vehicles and equipment, storage of materials associated with waste storage and transfer, and other industrial activities

⁶ 2010 Integrated Report – All Assessed Waters, available at:
http://www.waterboards.ca.gov/water_issues/programs/tmdl/integrated2010.shtml, (last accessed on September 10, 2014).

⁷ Id.

⁸ Id.

occur throughout the Orangewood Avenue Facility outdoors, without adequate cover to prevent storm water and non-storm water exposure to pollutant sources, and without secondary containment or other adequate treatment measures to prevent polluted storm water and non-storm water from discharging from the facility. Further, information available to Coastkeeper indicates that the pollutants associated with the facility have been and continue to be tracked throughout the site, where they accumulate at the storm water discharge points and the driveways leading to Orangewood Avenue. This results in trucks and vehicles tracking trash, recyclables, sediment, dirt, oil and grease, metal particles, and other pollutants off-site. The resulting illegal discharges of polluted storm water and non-storm water impact Coastkeeper's members' use and enjoyment of the Receiving Waters by degrading the quality of those waters, and by posing risks to human health and aquatic life.

iii. Storm Water Flows and Discharge Locations

Information available to Coastkeeper indicates that there are at least four (4) discharge points located on site: two driveways onto Orangewood Avenue, and storm and/or sanitary sewer discharges from the back side of the building located on site and from a paved area outside of the building. Coastkeeper will add further information relating to the facility discharge points when it becomes available.

D. Violations of The Clean Water Act and the Storm Water Permit

In California, any person who discharges storm water associated with industrial activity must comply with the terms of the Storm Water Permit in order to lawfully discharge pollutants. *See* 33 U.S.C. §§ 1311(a), 1342; 40 C.F.R. § 122.26(c)(1); *see also* Storm Water Permit, Fact Sheet at VII.

i. Discharges of Pollutants Without an NPDES Permit in Violation of Sections 301(a) and 402(p)(2)(B) of the Clean Water Act

The Clean Water Act requires that any person discharging pollutants to a water of the United States from a point source⁹ obtain coverage under an NPDES permit. *See* 33 U.S.C. §§ 1311(a), 1342; 40 C.F.R. § 122.26(c)(1). The CR&R Facility Owner and/or Operator discharges pollutants from point sources at the Orangewood Avenue Facility to waters of the United States without NPDES permit coverage in violation of Section 301(a) of the Clean Water Act.

In California, industrial dischargers not covered under an individual NPDES permit must comply with the terms of the Storm Water Permit to lawfully discharge storm water associated with industrial activity. *See id.*; *see also* Storm Water Permit, Fact Sheet p. VII. Information

⁹ The Clean Water Act defines a point source as any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. 33 U.S.C. § 1362(14); *see* 40 C.F.R. § 122.2

available to Coastkeeper indicates that the Orangewood Avenue Facility's applicable SIC code is 4231. SIC code 4231 facilities are required to obtain coverage under the Storm Water Permit or an individual NPDES permit, as required by the Clean Water Act. The Orangewood Avenue Facility Owner and/or Operator discharges storm water associated with industrial activities without Storm Water Permit coverage in violation of the Storm Water Permit and the Clean Water Act.

Every day the CR&R Facility Owner and/or Operator conducts industrial activities without NPDES permit coverage is a separate and distinct violation of the Clean Water Act and the Storm Water Permit. CR&R Facility Owner and/or Operator has been in daily and continuous violation of the requirement to obtain and comply with the Storm Water Permit and/or an individual NPDES permit every day since beginning operations at the Orangewood Avenue Facility. These violations are ongoing, and Coastkeeper will include additional violations when additional information and data become available. The CR&R Facility Owner and/or Operator is subject to civil penalties for all violations of the Clean Water Act occurring since September 11, 2009.

ii. **Discharges of Pollutants Not in Compliance with an NPDES Permit in Violation of Sections 301(a) and/or 402 of the Clean Water Act**

a. **Discharges from the Orangewood Avenue Facility Not in Compliance with an NPDES Permit Violate Sections 301(a) and/or 402 of the Clean Water Act**

Section 301(a) of the Clean Water Act prohibits any person from discharging any pollutant from a point source to a water of the United States except in compliance with an NPDES permit. As stated above, the CR&R Facility Owner and/or Operator discharges pollutants from point sources without an NPDES permit. Thus discharges from the Orangewood Avenue Facility are not in compliance with an NPDES permit in violation of Section 301(a) of the Clean Water Act.

Section 402 establishes requirements for NPDES permits. The Storm Water Permit is an NPDES permit issued pursuant to section 402(p) that regulates storm water discharges associated with industrial activities, and includes, among other requirements, Effluent Limitations, Receiving Water Limitations, and Discharge Prohibitions. Specifically, Effluent Limitation (B)(3) of the Storm Water Permit requires dischargers to reduce or prevent pollutants associated with industrial activity in storm water discharges through implementation of BMPs that achieve BAT for toxic pollutants and BCT for conventional pollutants. EPA Benchmarks are relevant and objective standards for evaluating whether a permittee's BMPs achieve compliance with BAT/BCT standards as required by Effluent Limitation B(3) of the Storm Water Permit.

Receiving Water Limitation C(1) of the Storm Water Permit prohibits storm water discharges and authorized non-storm water discharges to surface water that adversely impact human health or the environment. Discharges that contain pollutants in concentrations that exceed levels known to adversely impact aquatic species and the environment constitute violations of Receiving Water Limitation C(1) of the Storm Water Permit and the Clean Water Act. Receiving Water Limitation C(2) of the Storm Water Permit prohibits storm water

discharges and authorized non-storm water discharges that cause or contribute to an exceedance of an applicable WQS. Discharges that contain pollutants in excess of an applicable WQS violate Receiving Water Limitation C(2) of the Storm Water Permit and the Clean Water Act.

Except as authorized by the Storm Water Permit, Discharge Prohibition A(1) of the Storm Water Permit prohibits permittees from discharging materials other than storm water (non-storm water discharges) either directly or indirectly to waters of the United States. Prohibited non-storm water discharges must be either eliminated or permitted by a separate NPDES permit. *See* Storm Water Permit, Discharge Prohibition A(1).

Based on Coastkeeper's observations it is Coastkeeper's understanding that the Orangewood Avenue Facility Owner and/or Operator conducts equipment and/or bin washing on the Orangewood Avenue Facility. Prohibited non-storm water discharges occur when wash water from equipment and/or bin washing discharges from the facility discharge points. Coastkeeper also observed that pollutant sources are stored outdoors without adequate cover or containment, and near driveways leading out of the Orangewood Avenue Facility, and that industrial activities at the facility are conducted outdoors without adequate cover to prevent storm water exposure to pollutant sources, and without secondary containment or other measures to prevent pollutants from discharging from the Orangewood Avenue Facility.

Thus, to the extent the CR&R Facility Owner and/or Operator obtains coverage under the Storm Water Permit for the Orangewood Avenue Facility, information available to Coastkeeper indicates that the CR&R Facility Owner and/or Operator has discharged, and continues to discharge, storm water associated with industrial activities from the facility not in compliance with the terms of the Storm Water Permit in violation of Sections 301(a) and 402 of the Clean Water Act. The CR&R Facility Owner and/or Operator has failed and continues to fail to develop and/or implement BMPs that achieve BAT/BCT standards in violation of Effluent Limitation B(3) of the Storm Water Permit. The CR&R Facility Owner and/or Operator has also failed and continues to fail to develop and/or implement BMPs that prevent pollutants discharging from the Orangewood Avenue Facility from adversely impacting human health or the environment or causing or contributing to exceedances of applicable WQS in violation of Receiving Water Limitations C(1) and C(2) of the Storm Water Permit. Further, the CR&R Facility Owner and/or Operator has discharged and continues to discharge prohibited non-storm water discharges from the Orangewood Avenue Facility in violation of Discharge Prohibition A(1) of the Storm Water Permit.

Every day pollutants are discharged from the Orangewood Avenue Facility to a water of the United States not in compliance with an NPDES permit is a separate and distinct violation of the Clean Water Act. These violations are ongoing, and will continue each day discharges of pollutants occur from the Orangewood Avenue Facility. *See, e.g.*, Exhibit A (setting forth dates of rain events resulting in a discharge at the facility).¹⁰ Coastkeeper anticipates obtaining

¹⁰ Exhibit A lists dates of significant rain events as measured at the Garden Grove Fire Station rain gauge from December 2009 to May 2013. Dates of significant rain events from October 2013 to April 2014 listed in Exhibit A were measured at the Santa Ana rain gauge, as current data from the Garden Grove Fire Station is not yet available.

additional information regarding the number and dates of CR&R Facility Owner's and/or Operator's discharges not in compliance with an NPDES permit, and Coastkeeper will include additional violations when additional information and data become available. The CR&R Facility Owner and/or Operator is subject to civil penalties for all violations of the Clean Water Act occurring since September 11, 2009.

b. The CR&R Facility Owner and/or Operator Has Failed to Develop, Implement and/or Revise an Adequate Storm Water Pollution Prevention Plan for the Orangewood Avenue Facility

Section A(1) and Provision E(2) of the Storm Water Permit requires dischargers to have developed and implemented a SWPPP by October 1, 1992, or prior to beginning industrial activities, that meets all of the requirements of the Storm Water Permit. The objective of the SWPPP requirement is to identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm water discharges from the Orangewood Avenue Facility, and to implement site-specific BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges. Storm Water Permit, Section A(2). These BMPs must achieve compliance with the Storm Water Permit's Effluent Limitations and Receiving Water Limitations. To ensure compliance with the Storm Water Permit, the SWPPP must be evaluated on an annual basis pursuant to the requirements of Section A(9). The SWPPP must also be revised as necessary to ensure compliance with the Storm Water Permit. *Id.*, Sections A(9) and A(10).

Sections A(3) – A(10) of the Storm Water Permit set forth the requirements for a SWPPP. Among other things, the SWPPP must include: a site map showing the facility boundaries, storm water drainage areas with flow patterns, nearby water bodies, the location of the storm water collection, conveyance and discharge system(s), structural control measures, areas of actual and potential pollutant contact, and areas of industrial activity (*see* Section A(4)); a list of significant materials handled and stored at the site (*see* Section A(5)); a description of potential pollutant sources including industrial processes, material handling and storage areas, dust and particulate generating activities; a description of significant spills and leaks, a list of all non-storm water discharges and their sources; and a description of locations where soil erosion may occur (*see* Section A(6)). Sections A(7) and A(8) require an assessment of potential pollutant sources at the facility and a description of the BMPs to be implemented at the facility that will reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges, including structural BMPs where non-structural BMPs are not effective.

The CR&R Facility Owners and/or Operator was required to develop and implement a SWPPP prior to commencing industrial activities at the Orangewood Avenue Facility. *See* Storm Water Permit Section A(1) and Provision E(2). Information available to Coastkeeper indicates that the CR&R Owner and/or Operator has been conducting and continues to conduct industrial activities at the Orangewood Avenue Facility without developing and implementing a SWPPP.

A significant rain event is defined by EPA as a rainfall event generating 0.1 inches or more of rainfall, which generally results in measurable discharges at a typical industrial facility.

Information available to Coastkeeper also indicates that the CR&R Facility Owner and/or Operator has been conducting and continues to conduct industrial activities at the Orangewood Avenue Facility without adequately developing, implementing, and/or revising a SWPPP to implement BMPs to reduce or prevent pollutants from discharging from the facility.

Every day the CR&R Facility Owner and/or Operator operates the Orangewood Avenue Facility without developing and implementing a SWPPP is a separate and distinct violation of the Storm Water Permit and the Clean Water Act. Every day the CR&R Facility Owner and/or Operator operates the Orangewood Avenue Facility without adequately developing, implementing, and/or revising a SWPPP to implement BMPs to reduce or prevent pollutants from discharging from the facility is a separate and distinct violation of the Storm Water Permit and the Clean Water Act. These violations are ongoing, and Coastkeeper will include additional violations and detail when information becomes available. The CR&R Facility Owner and/or Operator is subject to civil penalties for all violations of the Clean Water Act occurring since September 11, 2009.

c. The CR&R Facility Owner and/or Operator Has Failed to Develop, Implement, and/or Revise an Adequate Monitoring and Reporting Program for the Orangewood Avenue Facility

Section B(1) and Provision E(3) of the Storm Water Permit require facility operators to develop and implement an adequate M&RP by October 1, 1992, or prior to the commencement of industrial activities at a facility, that meets all of the requirements of the Storm Water Permit. The primary objective of the M&RP is to detect and measure the concentrations of pollutants in a facility's discharge to ensure compliance with the Storm Water Permit's Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations. *See* Storm Water Permit, Section B(2). The M&RP must therefore ensure that BMPs are effectively reducing and/or eliminating pollutants at the facility, and are evaluated and revised whenever appropriate to ensure compliance with the Storm Water Permit. *See id.* Dischargers must also revise the M&RP to ensure that BMPs are effectively reducing and/or eliminating pollutants at the facility. *See id.*, *see also* Section B(4).

Section B(1) and Provision E(3) of the Storm Water Permit require facility operators to develop and implement an adequate monitoring and reporting plan ("M&RP") by October 1, 1992, or prior to the commencement of industrial activities at a facility, that meets all of the requirements of the Storm Water Permit. The primary objective of the M&RP is to detect and measure the concentrations of pollutants in a facility's discharge to ensure compliance with the Storm Water Permit's Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations. *See* Storm Water Permit, Section B(2). The M&RP must therefore ensure that BMPs are effectively reducing and/or eliminating pollutants at the facility, and are evaluated and revised whenever appropriate to ensure compliance with the Storm Water Permit. *See id.* Dischargers must also revise the M&RP to ensure that BMPs are effectively reducing and/or eliminating pollutants at the facility. *See id.*, *see also* Section B(4).

Sections B(3) through B(16) of the Storm Water Permit set forth the M&RP requirements. Specifically, Section B(3) requires dischargers to conduct quarterly visual

observations of all drainage areas within their facility for the presence of authorized and unauthorized non-storm water discharges. Section B(4) requires dischargers to conduct visual observations of storm water discharges during the first hour of discharge at each discharge point of at least one storm event per month during the Wet Season. Sections B(3) and (4) further require dischargers to document the presence of any floating or suspended material, oil and grease, discolorations, turbidity, odor and the source of any pollutants. Dischargers must maintain records of observations, observation dates, locations observed, and responses taken to eliminate unauthorized non-storm water discharges and to reduce or prevent pollutants from contacting non-storm water and storm water discharges. Storm Water Permit, Sections B(3) and (4). Dischargers must also revise the SWPPP to ensure that BMPs are effectively reducing and/or eliminating pollutants at the facility. *Id.*, Section B(4).

Sections B(5) and (7) of the Storm Water Permit require dischargers to visually observe and collect samples of storm water discharges from all locations where storm water is discharged. Dischargers are also required to collect storm water samples during the first hour of discharge from the first storm event of the Wet Season, and from at least one (1) additional storm water event. *See* Storm Water Permit, Section B(5)(a). Storm water samples shall be analyzed for TSS, pH, specific conductance, total organic carbon or O & G, toxic chemicals and other pollutants that are likely to be present in significant quantities in the discharges. *Id.*, Section B(5)(c).

Information available to Coastkeeper indicates that CR&R Facility Owner and/or Operator has been conducting and continues to conduct activities at the Orangewood Avenue Facility without developing, implementing, and/or revising an adequate M&RP.

The CR&R Facility Owner's and/or Operator's failure to develop, implement, and/or revise an adequate M&RP prior to commencing industrial activities at the Orangewood Avenue Facility violates the Storm Water Permit. The CR&R Facility Owner's and/or Operator's failure to visually observe storm water discharges and to collect samples of storm water samples from the Orangewood Avenue Facility also violates the Storm Water Permit. Every day that the CR&R Facility Owner and/or Operator conducts industrial activities without developing, implementing, and/or revising an adequate M&RP is a separate and distinct violation of the Storm Water Permit and the Clean Water Act. These violations are ongoing, and Coastkeeper will include additional violations and detail when additional information and data become available. The CR&R Facility Owner and/or Operator is subject to civil penalties for all violations of the Clean Water Act occurring since September 11, 2009.

IV. RELIEF AND PENALTIES SOUGHT FOR VIOLATIONS OF THE CLEAN WATER ACT

Pursuant to Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4, each separate violation of the Clean Water Act subjects the violator to a penalty for all violations occurring during the period commencing five (5) years prior to the date of a notice of intent to file suit letter. These provisions of law authorize civil penalties of up to \$37,500 per day per violation for all Clean Water Act violations on and after January 12, 2009. In addition to civil penalties, Coastkeeper

will seek injunctive relief preventing further violations of the Clean Water Act pursuant to Sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), declaratory relief, and such other relief as permitted by law. Lastly, pursuant to Section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), Coastkeeper will seek to recover its costs, including attorneys' and experts' fees, associated with this enforcement action.

V. CONCLUSION

Coastkeeper is willing to discuss effective remedies for the violations described in this Supplemental Notice Letter. However, upon expiration of the 60-day notice period, Coastkeeper will amend its pending Complaint against the CR&R Facility Owner and/or Operator for its violations of the Clean Water Act and the Storm Water Permit described herein. Please direct all communications to Coastkeeper's legal counsel:

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Sincerely,



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Exhibit A

Date	Day of Week	Rain Fall
12/8/09	Tuesday	0.75
12/13/09	Sunday	0.54
12/22/09	Tuesday	0.22
12/31/09	Thursday	0.11
1/18/10	Monday	0.32
1/19/10	Tuesday	1.07
1/20/10	Wednesday	0.71
1/21/10	Thursday	0.3
1/22/10	Friday	1.21
1/23/10	Saturday	0.48
1/27/10	Wednesday	0.18
2/6/10	Saturday	2.37
2/10/10	Wednesday	0.74
2/27/10	Saturday	0.66
2/28/10	Sunday	0.1
3/4/10	Thursday	0.1
3/7/10	Sunday	0.18
4/12/10	Monday	0.54
4/22/10	Thursday	0.16
4/28/10	Wednesday	0.21
10/6/10	Wednesday	0.16
10/7/10	Thursday	0.2
10/20/10	Wednesday	0.63
10/25/10	Monday	0.12
10/30/10	Saturday	0.28
11/20/10	Saturday	0.24
11/21/10	Sunday	0.39
11/24/10	Wednesday	0.12
11/28/10	Sunday	0.12
12/6/10	Monday	0.51
12/18/10	Saturday	0.71
12/19/10	Sunday	1.46
12/20/10	Monday	1.34
12/21/10	Tuesday	2.13
12/22/10	Wednesday	2.28
12/23/10	Thursday	0.43
12/26/10	Sunday	0.71
12/29/10	Wednesday	0.43
12/30/10	Thursday	0.59
1/3/11	Monday	0.72
2/16/11	Wednesday	0.18
2/19/11	Saturday	0.56

Date	Day of Week	Rain Fall
2/20/11	Sunday	0.24
2/26/11	Saturday	1.08
3/21/11	Monday	1.31
3/22/11	Tuesday	0.16
3/24/11	Thursday	0.49
3/25/11	Friday	0.25
5/17/11	Tuesday	0.11
5/18/11	Wednesday	0.43
10/5/11	Wednesday	0.12
10/6/11	Thursday	0.85
11/5/11	Saturday	0.15
11/7/11	Monday	0.2
11/12/11	Saturday	0.18
11/21/11	Monday	0.58
12/12/11	Monday	0.49
12/13/11	Tuesday	0.7
1/21/12	Saturday	0.45
1/22/12	Sunday	0.16
1/24/12	Tuesday	0.56
2/16/12	Thursday	0.22
2/28/12	Tuesday	0.18
3/18/12	Sunday	0.69
3/26/12	Monday	0.87
4/11/12	Wednesday	0.32
4/14/12	Saturday	0.64
4/26/12	Thursday	0.22
11/29/12	Thursday	0.33
11/30/12	Friday	0.17
12/1/12	Saturday	0.22
12/3/12	Monday	0.54
12/13/12	Thursday	0.57
12/18/12	Tuesday	0.13
12/24/12	Monday	0.78
12/26/12	Wednesday	0.13
12/30/12	Sunday	0.1
1/24/13	Thursday	0.59
1/25/13	Friday	0.33
2/9/13	Saturday	0.12
2/20/13	Wednesday	0.26
3/8/13	Friday	0.41
5/6/13	Monday	0.32
10/10/13	Thursday	0.24

Date	Day of Week	Rain Fall
11/21/13	Thursday	0.32
11/30/13	Saturday	0.22
12/8/13	Sunday	0.27
12/20/13	Friday	0.16
2/3/14	Monday	0.12
2/7/14	Friday	0.11
2/27/14	Thursday	0.44
2/28/14	Friday	0.5
3/1/14	Saturday	1.07
3/2/14	Sunday	0.33
4/2/14	Wednesday	0.12
4/26/14	Saturday	0.22
Total Rain Events of 0.1 or greater		96

